



San Diego City Attorney **MICHAEL J. AGUIRRE**

NEWS RELEASE

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SDCERS BOARD REFUSES TO DISCUSS MEDIATION REGARDING CITY ATTORNEY ROLE

San Diego, CA: City Attorney Michael Aguirre wants a mediator to formulate a plan that will clearly authorize the City Attorney's Office to act as legal counsel to the San Diego City Employees' Retirement System (SDCERS). However, this afternoon the SDCERS Board rebuffed Aguirre's request. Citing the fact that the City Attorney's role is a matter of pending litigation, SDCERS Board President Steve Meyer refused to allow Aguirre to appear before the SDCERS Board next Friday to discuss appointing a mediator. However, City Attorney Aguirre disagrees that the matter of a mediator would be an inappropriate topic for consideration.

"The Board's obstructive action serves only to underscore the reason that SDCERS should be put into receivership," said City Attorney Michael Aguirre. "Because of the leadership vacuum at SDCERS, the Board continues to react in a defensive manner instead of seeking constructive ways to find a mutually acceptable resolution."

In a February 22, 2005 memorandum to the Mayor and City Council, City Attorney Aguirre requested that the Mayor and City Council authorize the City Attorney to take all legal steps necessary to place SDCERS in receivership. Aguirre based his request on his assertion that SDCERS failure to meet its fiduciary duties has resulted in a \$1.4 billion underfunding of the City employees' pension fund. The memo also outlined the City Attorney's 8-step legal action plan to address the City's financial condition.

Aguirre said in his memo, "If a receiver is not appointed to place the control of the pension system under court supervision, the plan's beneficiaries (city employees) will suffer irreparable harm. An independent receiver, expert in pensions and financial work outs, would be the best person to steer the pension system out of its financial crisis. Because neither the current board nor a replacement board of volunteers is likely to be able to move the system through the difficult administrative changes needed to reform the pension system, the San Diego City Attorney requests that the Mayor and City Council support all legal steps needed to place the SDCERS in receivership, including the appointment of a highly qualified receiver."

In today's Union-Tribune, Council member Scott Peters warns that receivership may be the result if pension board members continue to refuse to waive the attorney-client privilege and hand over documents being requested by investigative authorities with the U.S. Attorney's Office, the Securities and Exchange Commission, the District Attorney, and the City Attorney's Office.

On December 15, 2004, City Attorney Aguirre terminated a 1998 Memorandum of Understanding (MOU) between the City of San Diego and the Retirement System that permitted SDCERS to retain its own legal services department. The 1998 MOU also reserved the City Attorney's rights under the City's Charter and Municipal Code "regarding his rights and responsibilities to the Retirement System under Section 40 of the City Charter." Furthermore, City Attorney Aguirre also stated in his December memo that the decision of the prior City Attorney to abdicate his Charter-mandated role as legal advisor to the SDCERS was legal error.

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